UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IRON WORKERS LOCALS 40, 361 AND 417 ANNUITY FUND, Plaintiff, -against- SUSAN M. SPISSINGER, JOHN G. SPISSINGER, JR., JOSEPH MARVIL, JOSEPH MARVIL, JR., SUSAN MARVIL, Defendants.	Civil Action No.: 17-1691 **INTERPLEADER COMPLAINT**

PLAINTIFF, IRON WORKERS LOCALS 40, 361 AND 417 ANNUITY FUND, by its attorneys, COLLERAN, O'HARA & MILLS, respectfully alleges as follows:

PARTIES

1. At all times hereinafter mentioned, plaintiff, IRON WORKERS LOCALS 40, 361 AND 417 ANNUITY FUND (hereinafter "ANNUITY FUND" or "FUND"), was and is a Taft-Hartley "employee benefit fund" within the meaning of 29 U.S.C. § 186, and is an employee "pension plan" as defined in ERISA Section 3(1) and (2), 29 U.S.C. §§ 1002(1) and (2), is established and maintained by a labor organization and employers engaged in commerce in an industry affecting commerce, and further qualifies as a multi-employer plan within the meaning of ERISA Section 3(37)(a), 29 U.S.C. § 1002(37)(a), with its principal place of business located at 451 Park Avenue South, 9th Floor, New York, New York 10016.

2. At all times hereinafter mentioned, interpleader defendant, SUSAN M. SPISSINGER, was and is a resident of 16 Southwest 23rd Way, Deerfield Beach, Florida 33442.

3. At all times hereinafter mentioned, interpleader defendant, JOHN G. SPISSINGER, JR., was and is a resident of 88 Nelson Road, Plattsburgh, New York 12901.

4. At all times hereinafter mentioned, interpleader defendant, JOSEPH MARVIL, was

and is a resident of 26271 West Cedar Niles Creek, Olathe, Kansas 66061.

5. At all times hereinafter mentioned, interpleader defendant, JOSEPH MARVIL, JR., was and is a resident of 5607 West 98th Street, Overland Park, Kansas 66207.

6. At all times hereinafter mentioned, interpleader defendant, SUSAN MARVIL, was and is a resident of 6409 Maple Drive, Mission, Kansas 66202.

JURISDICTION

7. This Court has jurisdiction over the interpleader action pursuant to 28 U.S.C. § 1335.

8. Venue in this district is appropriate pursuant to 28 U.S.C. § 1397.

9. This Court has personal jurisdiction over the defendants in this action pursuant to 28 U.S.C. § 2361.

BACKGROUND

10. Anna D. Spissinger, a non-party herein, was a participant in the ANNUITY FUND at the time of her death, at the age of 69, which occurred on April 8, 2016.

11. Anna D. Spissinger was not a participant in any other Iron Workers Locals 40, 361 & 417 Union Security Fund – to wit, the Iron Workers Locals 40, 361 & 417 Health Fund; the Iron Workers Locals 40, 361 & 417 Pension Fund; the Iron Workers Locals 40, 361 & 417 Topping Out Fund; or the Iron Workers Locals 40, 361 & 417 Vacation Fund.

12. To date, Ms. Spissinger's ANNUITY FUND account has a balance in the amount of $146,182.98.

13. On or about August 25, 2003, Ms. Spissinger executed five (5) beneficiary designation cards assigning benefits from various Iron Workers Locals 40, 361 & 417 Union Security Funds to certain of her relatives. Despite the fact that Ms. Spissinger solely retained an interest in the ANNUITY FUND, she assigned various portions of benefits from different Union Security Funds as follows:

a. 33.5% of Ms. Spissinger's interest in the Health Fund to her son, John G. Spissinger, Jr.;

b. 33.5% of Ms. Spissinger's interest in the Pension Fund to her daughter, Susan M. Spissinger;

c. 13.2% of Ms. Spissinger's interest in the Topping Out Fund to her grandson, Joseph Marvil, Jr.;

d. 13.2% of Ms. Spissinger's interest in the Vacation Fund to her granddaughter, Susan Marvil;

e. 6.6% of Ms. Spissinger's interest in the ANNUITY FUND to her son-in-law, Joseph Marvil.

14. Ms. Spissinger never amended or resubmitted any beneficiary designation cards.

15. On or about February 13, 2012, Ms. Spissinger executed her Last Will & Testament in the presence of Albert J. Kaiser, Esq., Andrea Sheridan and Betsy Castillo in New City, New York.

16. Although there is no mention of the ANNUITY FUND or any other retirement benefits in Ms. Spissinger's Last Will & Testament, the document devises and bequeaths her residual estate in roughly the same ratios as set forth in the beneficiary designation cards.

17. Ms. Spissinger's Last Will & Testament names her son, JOHN G. SPISSINGER, JR., as the Executor of her Will.

18. On or about May 24, 2016, JOHN G. SPISSINGER, JR. and JOSEPH MARVIL obtained a decree granting probate of Ms. Spissinger's Last Will & Testament.

19. On or about May 24, 2016, JOHN G. SPISSINGER, JR. was named the fiduciary of Ms. Spissinger's estate authorized and empowered to perform all acts requisite to the proper administration thereof.

20. On or about June 7, 2016, JOHN G. SPISSINGER, JR. sent a letter to FUND

requesting full distribution of Ms. Spissinger's remaining annuity account to her estate.

21. After conferring with counsel, the FUND explained to JOHN G. SPISSINGER, JR. that the FUND could not distribute any portion of Ms. Spissinger's annuity account that was not properly designated on a beneficiary card.

22. On or about August 10, 2016, JOHN G. SPISSINGER, JR.'s attorney, Albert J. Kaiser, Esq., provided background regarding Ms. Spissinger's execution of beneficiary designation cards for the Locals 40, 361 & 417 Union Security Funds and again requested the remaining annuity account to be distributed to the estate:

> I had represented the decedent concerning certain estate planning issues in 2003 and in connection therewith, I had sent a letter to the union requesting beneficiary designation forms for the qualified account she had with the union. In response to my request, I was provided with a series of index cards. Each card provided was for a different fund but were otherwise exactly the same. Not realizing or understanding that each index card was for a different fund, we used a separate card for each beneficiary intending them all to concern to the decedent's annuity fund. By letter dated August 26, 2003, a series of index cards were completed, all of which were intended for the same fund. [...] The cards were received by the Iron Workers on August 29, 2003. We were not advised of the obvious mistake that we had made, but rather the cards were simply filed away. I am now advised that 6.6% of the annuity fund has been designated to a particular beneficiary.
>
> The intention was to designate 100% of the beneficiaries to the annuity fund, the only fund held by the decedent with the Iron Workers at the time. I respectfully request that the decedent's beneficiary designations be recognized as all pertaining to the annuity fund having designated beneficiaries to 100% thereof.

23. Section 4.4 of the ANNUITY FUND Plan Document sets forth the procedure for designating beneficiaries and the default rules for undesignated assets as follows:

> A Participant, with the consent of his spouse and in the manner designated by the Trustees, on a form provided by the Trustees and delivered to the Trustees before his death, may designate a beneficiary(ies). A Participant may change his beneficiary(ies) (without the consent of the beneficiary(ies)) in the same manner. The Trustees shall be the sole judges of the effectiveness of the designation or change thereof. No designation of the beneficiary(ies) shall be effective unless the beneficiary(ies) is specified by name.

* * *

If no beneficiary has been designated, distribution of the remaining amount of the Accumulated Share or death benefit shall be made to the following persons, if then living, in the following Order of priority:

(a) Spouse of Participant or Annuitant;

(b) Child or children of Participant or Annuitant;

(c) Estate of Participant or Annuitant.

AS AND FOR A CLAIM FOR RELIEF

24. The FUND's Trustees are holding, on account, the accrued annuity benefits of Anna D. Spissinger in an amount greater than $500.00 within the meaning of 28 U.S.C. § 1335(a).

25. The FUND's Trustees are unable to determine the interpleaded defendants' respective rights, namely whether Ms. Spissinger's accrued annuity benefits – after being reduced pursuant to the valid beneficiary designation card of JOSEPH MARVIL – should be distributed pursuant to the default rules set forth in Section 4.4 of the Plan Document.

26. The FUND has no claim to the property and is ready and willing to deliver it to such persons as the court shall order.

27. This action is not brought by collusion with any of the interpleaded defendants.

WHEREFORE, Plaintiff, IRON WORKERS LOCALS 40, 361 AND 417 ANNUITY FUND, respectfully requests a judgment:

1. Restraining defendants, SUSAN M. SPISSINGER, JOHN G. SPISSINGER, JR., JOSEPH MARVIL, JOSEPH MARVIL, JR., and SUSAN MARVIL, by injunction from commencing or prosecuting any action or proceeding against the FUND or the Trustees in relation to the above claims;

2. Requiring defendants to interplead concerning their respective claims to the property;

3. Authorizing some person to receive the property pending such litigation;

4. Discharging plaintiff from all liability to any of the defendants in relation

to their claims upon delivery by plaintiff of the annuity benefits to an authorized receiver; and

5. Granting such other relief as the Court deems proper, together with the costs, attorneys fees and disbursements of this action.

Dated: Woodbury, New York
March 7, 2017

COLLERAN, O'HARA & MILLS LLP
Attorneys for Interpleader Plaintiff

By: ________________________
WILLIAM R. REINKEN (WRR-2801)
100 Crossways Park Drive West, Suite 200
Woodbury, New York 11797
Tel: (516) 248-5757
Fax: (516) 742-1765

TO: John G. Spissinger, Jr.
88 Nelson Rd
Plattsburgh, NY 12901

Susan M. Spissinger
16 S.W. 23rd Way
Deerfield Beach, FL 33442

Joseph Marvil, Jr.
5607 West 98th Street
Overland Park, KS 66207

Susan Marvil
6409 Maple Drive
Mission, KS 66202

Joseph Marvil
26271 W. Cedar Niles Creek
Olathe, KS 66061